

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

FILED
2023 JUN 20
CLERK
U.S. DISTRICT COURT

The Wizard Trades, et al

vs.

Lachase, et al.,

)

) Civil Action No. 2:23-cv-00207-DBB-DAO

)

)

ANDRA RUSH'S MOTION TO DISMISS

As one of the four defendants, Andra Rush submits this Motion to Dismiss¹ the Amended Complaint² of plaintiffs-- The Wizard Trades and Michael Hubbs (collectively "Plaintiffs")-- in the above-captioned matter pursuant to Federal Rule of Civil Procedure 12(b)(6).

As set forth herein, the Plaintiffs fail to state a claim against Andra Rush.

PRO SE FILING

Andra Rush was granted a thirty (30) day extension on May 5, 2023 to seek legal counsel. In discussion with some potential attorneys, Andra Rush was advised as a pro se litigant to seek legal assistance when drafting and filing this motion to dismiss. Regarding an anti-slapp motion, it is not clear if a pro se filing can obtain costs, reasonable attorney's fees, and damages, but

¹ By this motion, Defendant Andra Rush does not represent any other defendants in this case.

² Docket No. 8, ("Amended Complaint")

Andra Rush requests this motion to dismiss be construed as one if possible.

Despite this, Andra Rush appreciates this court extending the response time.

STATEMENT OF FACTS

The Plaintiffs filed the instant action on March 30, 2023, then amended the complaint on April 13, 2023 to request three counts³ against “All Defendants” and “BY TWT AGAINST ALL DEFENDANTS”: copyright infringement, libel and slander, and tortious interference with economic relations.

The amended complaint does not state any specific allegations of misconduct on the part of Andra Rush. Three instances of Andra Rush are stated within the four corners of the amended complaint. The first instance appears in the caption, the second instance appears in the opening sentence, and the third instance appears in the Parties section. Steven Duhon is similarly situated, without specific allegations, but with the fourth as the final instance located in the part of the certificate of service.

Despite this, the amended complaint includes specific allegations against two other defendants explicitly identified: Charlton Lachase and Brian Hertneky.

³ According to the Plaintiffs, four counts were listed, with the fourth count being false advertising against only one of the other defendants: Brian Hertneky.

However, the amended complaint contains instances of "defendants" or "Defendants" with the implied appearance of suggesting that Andra Rush is implicated in the allegations, even though she and her conduct are not explicitly identified.

The amended complaint includes a federal law statute against "All Defendants" as the first count of copyright infringement. This count does not state any specific alleged conduct by Andra Rush.

A second count of libel and slander is asserted against "All Defendants" without specifying any specific statutes. This count does not state any specific alleged conduct by Andra Rush.

One of the two plaintiffs, The Wizard Trades, asserts a third count of tortious interference with economic relations against "All Defendants" without identifying any specific statute. This count does not state any specific alleged conduct by Andra Rush.

One of the two plaintiffs, The Wizard Trades, asserts a fourth count of false advertising against Brian Hertneky as the only defendant.

There is a long list of reliefs requested against "Defendants" with the exception of Brian Hertneky, who is specifically alleged to be liable with specific reliefs requested.

Andra Rush has been creating content for YouTube, Facebook, and Instagram to reach thousands of Deaf people since 2020. Through videos using American Sign Language in a blogging style, Andra Rush discusses a broad range of topics affecting the Deaf community. The information provided by Andra Rush is accessible to monolingual Deaf members who only know American Sign Language. This information is invaluable as it is tailored specifically for the Deaf community, who often have difficulty accessing information due to the lack of content in accessible formats. Furthermore, Andra Rush's content is engaging and captivating, which has contributed to her growing audience.

There has been considerable discussion in the Deaf community about Michael Hubbs and other incidents for over a decade. Andra Rush has been one of the recent Deaf participants contributing information about Michael Hubbs' character and previous incidents involving him. However, Andra Rush is not the only one exercising her First Amendment rights to freely and openly discuss the impact Michael Hubb has on the Deaf community. Several other Deaf people have also spoken out about their experiences with Michael Hubbs, bringing awareness to how Michael Hubbs may have raised funds fraudulently. These same individuals also encouraged others to come forward

and share their stories. This has been a significant step in the use of a platform for the community to address the issue. This will ensure that incidents like this are not repeated in the future.

Michael Hubbs may have acquired a fraudulent reputation in April 2016. This was after Justin Vollmar offered his personal opinion⁴ that Hubbs is a "con artist" in response to this nationwide discussion. Vollmar's video garnered over 72,000 views and had 988 comments made as a response to this video.

This article⁵ by Joshua "Joshie" Sullivan describes Michael Hubbs' efforts to raise money for Olympic speed skating qualifying. This article shows how the Deaf community has been led to believe that Michael Hubbs has benefited personally from his fundraising efforts. This is instead of using the funds to qualify for the United States Olympic speed skating team. Consequently, this has caused mistrust and skepticism, with some believing that he is taking advantage of the Deaf community for his own gain.

⁴ Facebook profile of Justin Dean Vollmar, *Mike Hubbs is a Con Artist*, (April 27, 2016), <https://www.facebook.com/JustinDVollmar/videos/10153664821683691>; Screenshot and original video description with transcription attached as Exhibit #1

⁵ JoshiesWorld.com, *Michael Hubbs Is Hypocrite*, (April 30, 2016) <https://www.joshiesworld.com/michael-hubbs-hypocrite/> ; Article attached as Exhibit #2

A five-year-old story⁶ about Michael Hubbs' fundraising efforts was published by the Daily Moth, "a news commentary show, using vlogs featuring news, humor, and discussion related to issues within the deaf community as well as current events."⁷ Michael Hubbs is accused of possible deception by a Deaf individual in this story. This story also includes an individual's opinion "that [Michael] Hubbs' requests for donations seems [sic] very questionable and misleading." With 70,000 views, 403 comments have been made in response to the Daily Moth's story, many discussing Hubbs' possible fraudulent activities.

Since some time before 2016, Michael Hubbs' reputation has been well known among the Deaf community nationwide. As a result, the term "con artist" isn't new to the Deaf community today considering Michael Hubbs has been discussed for a very long time.

ARGUMENT

This court should dismiss the amended complaint against Andra Rush for failure to state a claim.

The amended complaint is silent as to any purported conduct by Andra Rush

⁶ The Daily Moth, *Deaf Speedskater, Michael Hubbs, Criticized For Not Trying Out for 2018 Olympics*, (March 8, 2018), <https://www.facebook.com/watch/?v=827659537435948>; Screenshot and original transcription attached as Exhibit #3.

⁷ Gallaudet University, Alumni Relations, *The Daily Moth delivers daily content to large viewing base*, (June 29, 2016), <https://gallaudet.edu/alumni-relations/the-daily-moth-delivers-daily-content-to-large-viewing-base/>

In their amended complaint, the Plaintiffs do not specifically allege that Andra Rush violated any statute when discussing Michael Hubbs and his business. Instead, they refer to Andra Rush as the "defendants" or "Defendants". According to Plaintiffs' amended complaint, (1) it does not include any allegations of purported conduct by Andra Rush and, as a consequence, fails to provide notice to Andra Rush of the nature of the claims against her, and (2) there is no basis for relief against Andra Rush. Andra Rush has not been properly notified of the claims made against her and cannot defend herself.

“Federal Rule of Civil Procedure 8(a)(2) requires that the allegations in a Complaint must give the defendant fair notice of what the claim [against her] is and the grounds upon which it rests. At the motion to dismiss stage, the court must be able to draw a reasonable inference that the individual defendant is liable for the alleged misconduct. The allegations must show which defendant is alleged to have done what to whom and what the misconduct is.”⁸

Because the Plaintiffs' formally licensed attorney did not comply with Rule 8(a) when amending the complaint, Andra Rush should be dismissed

⁸ *Silver v. Fairbank*, 2:22-cv-00140, 3 (D. Utah Jul. 8, 2022)

from this case with prejudice, since the amended complaint doesn't give Andra Rush sufficient notice as to the nature or basis of the claims the Plaintiffs are attempting to assert against her.⁹

Count I Has No Merits

“The plaintiff must prove that the defendant either knew that his or her conduct constituted copyright infringement or recklessly disregarded the possibility that his or her conduct constituted copyright infringement.”¹⁰

The Plaintiffs have not offered adequate factual allegations in their amended complaint to establish that Andra Rush knew of, infringed copyright work, or was put on notice to cease infringement. The Plaintiffs offer mere conclusory allegations against “All Defendants”. The Plaintiffs do not allege plausible facts about how, when, or where copying and distribution occurred, nor do the Plaintiffs allege that Andra Rush refused to cease potential infringing after notification. Thus, the Plaintiffs’ alleged Count I against Andra Rush must be dismissed with prejudice.

Count II Has No Merits

“A prima facie case for defamation must demonstrate that (1) the defendant published the statements in print or orally; (2) the statements

⁹ *Id.* at 4 n.22 (“Because Plaintiff is appearing pro se and this is his first complaint, dismissal without prejudice is warranted.”)

¹⁰ *Garvey v. Buzznick, LLC*, 2:22-cv-00400-DBB, 7 (D. Utah Jun. 1, 2023)

were false; (3) the statements were not subject to privilege; (4) the statements were published with the requisite degree of fault; and (5) the statements resulted in damages.”¹¹

It does not appear that the amended complaint establishes a prima facie case for defamation specifically against Andra Rush. Within the amended complaint, there are not any false statements allegedly made specifically by Andra Rush with intent. Thus, the Plaintiff’s alleged Count II against Andra Rush must be dismissed with prejudice.

Count III Has No Merits

“The elements of a tortious interference with economic relations claim are 1) that the defendant intentionally interfered with the plaintiffs existing or potential economic relations, 2) by improper means, and 3) causing injury to the plaintiff.”¹²

The Plaintiffs' amended complaint does not include an allegation of improper means by Andra Rush specifically. Additionally, the Plaintiffs have not alleged facts establishing that any of Andra Rush’s potential improper actions interfered with the Plaintiffs’ existing or potential economic

¹¹ *Jacob v. Bezzant*, 212 P.3d 535, 543 (Utah 2009)

¹² *Francis Trucking Inc. v. Francis*, 1:22-cv-00088-TC-JCB, 12 (D. Utah Feb. 1, 2023)

relationships. Thus, the Plaintiffs' alleged Count III against Andra Rush must be dismissed with prejudice.

CONCLUSION

It's pretty clear from the Plaintiffs' amended complaint and their litigation actions in the docket that they're upset by the Deaf community's open discussion of Michael Hubbs' long-standing negative effects. Out of hundreds of Deaf people who've discussed Michael Hubb's widely known problematic behaviors and his attempts to manipulate the same community, only four defendants were selected for this sham suit.

The Deaf community should not be bullied into silence by Michael Hubbs, who uses this court as a vehicle. The actions he has taken in this court are a response to discussions within the Deaf community on a national scale, because he has a long-standing negative reputation in the community.

If Michael Hubbs prevails against public interests with this fear-mongering and harassing lawsuit, he will intimidate the entire Deaf community into silence. Due to the possible lack of legal understanding, members may be led to believe they are unable to freely express their opinions, discuss their well-being, and learn how to protect themselves from individuals like Michael Hubbs. Hence, the outcome of this threatening

lawsuit is of the utmost importance, as it could determine how Deaf people can share their concerns and prepare to protect themselves from manipulative individuals.

For the foregoing reasons, Defendant Andra respectfully requests that this court dismiss the amended complaint against her in its entirety, with prejudice.

Respectfully submitted this 20th of
June

/s/AndraRush
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th of June 2023, a true and correct copy of the above and foregoing document has been sent via email as an attached file in the form of a PDF to the clerk of the U.S. District Court for the District of Utah and to each of the following, except Steven Duhon whose mail was postmarked to:

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/s/AndraRush
Defendant, *pro se*